

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Case No. 21-40882

Jeffrey Scott Cates and
Christine Therese Cici-Cates,

Chapter 11

Debtors.

**EXPEDITED MOTION TO AUTHORIZE CORTRUST BANK, N.A.
TO CHANGE ITS VOTE ON THE DEBTORS' PLAN
UNDER FED. R. BANKR. P. 3018**

TO: The entities specified in Local Rule 9013-3.

1. CorTrust Bank, N.A. ("CorTrust"), a secured creditor in this Subchapter V Chapter 11 case, moves the Court for the relief requested below and give notice of hearing.

2. The Court will hold a hearing on this motion at **1:00 p.m. on Monday, February 13, 2023**, before the Honorable William J. Fisher, United States Bankruptcy Judge. The hearing will be conducted telephonically. Please dial 1-888-684-8852 to call in for the hearing. When prompted, enter access code: 5988550. When prompted, enter security code: 0428. Any person wanting to appear in person must contact Judge Fisher's Courtroom Deputy at 651-848-1061 at least 48 hours prior to the hearing.

3. This Court has jurisdiction over this motion under 28 U.S.C. § 1334. This proceeding is a core proceeding under 28 U.S.C. § 157(b). The petition commencing this Chapter 11 case was filed on May 17, 2021, and it is now pending in this Court. Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

4. This motion arises under 11 U.S.C. § 1126 and Fed. R. Bankr. P. 3018. This motion is filed under Fed. R. Bankr. P. 5005 and 9014.

RELIEF REQUESTED

5. On July 21, 2022, the Debtors filed a proposed Third Modified Plan of Reorganization [ECF No. 190] (the “Third Plan”). On December 8, 2022, CorTrust objected to the Third Plan [ECF No. 240]. CorTrust also submitted a ballot rejecting the Third Plan. *See* ECF No. 257.

6. On January 26, 2023, the Debtors filed a proposed Fourth Modified Plan of Reorganization [ECF No. 259] (the “Fourth Plan”). Under the Fourth Plan, CorTrust is a Class I secured creditor and the Debtors propose to pay CorTrust’s allowed secured claim in full. The Fourth Plan also provides that, if Cor Trust’s allowed secured claim is not paid in full, it will have an allowed Class III general unsecured claim in the amount of any deficiency.

7. On February 2, 2023, CorTrust objected to the Fourth Plan [ECF No. 264]. In its objection, CorTrust stated that the Fourth Plan cannot be confirmed because it does not comply with Sections 363(k), 1186, and 1192 of the United Bankruptcy Code. It proposed that the Debtors make specific changes to Article VIII, Part B, and Article XIII of the Fourth Plan to remedy CorTrust’s objection. CorTrust also stated it is willing to accept the Fourth Plan if its proposed changes are made.

8. On February 7, 2023, the Debtors filed a response to CorTrust’s objection [ECF No. 266] stating they do not object to CorTrust’s proposed changes to the plan. At a hearing held on February 9, 2023, the Debtors’ counsel stated they will file a proposed Fifth Modified Plan of Reorganization that adopts the changes requested by CorTrust (the “Fifth Plan”).

9. Subject to and conditioned upon the Debtors’ filing of a Fifth Plan that adopts all of the changes requested by CorTrust, CorTrust is willing to change its vote to accept the Fifth Plan. In that regard, Federal Rule of Bankruptcy Procedure states: “For cause shown, the court after notice and hearing may permit a creditor or equity security holder to change or withdraw an

acceptance or rejection.” *See Fed. R. Bankr. P. 3018.*

10. Pursuant to Fed. R. Bankr. P. 3018, CorTrust hereby moves the Court to allow it to change its vote rejecting the Third Plan to a vote accepting the Fifth Plan, provided that the Fifth Plan adopts all of the changes requested by CorTrust.

11. CorTrust’s proposed changes are set forth in its objection to the Fourth Plan [ECF No. 264]. CorTrust has not requested or received any consideration or promises in exchange for its acceptance of the Fifth Plan other than as set forth therein.

12. In the event the Fifth Plan does not adopt all of the changes requested by CorTrust, or if it otherwise adversely changes CorTrust’s rights, CorTrust reserves its right to withdraw this motion.

WHEREFORE, based on the foregoing, CorTrust moves the Court for an order as follows:

1. Granting CorTrust’s request for an expedited hearing; and
2. Allowing CorTrust to change its vote rejecting the Third Plan to a vote accepting the Fifth Plan, provided that the Fifth Plan adopts all of the changes requested by CorTrust in its objection filed at ECF No. 264 and does not otherwise adversely affect CorTrust’s rights.

Dated: August 18, 2022

FAFINSKI MARK & JOHNSON, P.A.

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DISTRICT OF MINNESOTA**

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**ORDER AUTHORIZING CORTRUST BANK, N.A.
TO CHANGE ITS VOTE ON THE DEBTORS' PLAN
UNDER FED. R. BANKR. P. 3018**

This case is before the Court on the expedited motion of CorTrust Bank, N.A. ("CorTrust") to authorize it to change its vote on the Debtors' proposed plan of reorganization under Fed. R. Bankr. P. 3018.

Pursuant to Fed. R. Bankr. P. 3018, and based on CorTrust's motion and the proceedings herein, IT IS ORDERED:

1. CorTrust's request for expedited relief is granted; and
2. CorTrust is authorized to change its vote rejecting the Debtors' Third Modified Plan of Reorganization dated July 21, 2022 [ECF No. 190] to a vote accepting the Debtors' proposed Fifth Modified Plan of Reorganization ("Fifth Plan"), provided that the Fifth Plan adopts all of the changes requested by CorTrust in its objection filed at ECF No. 264 and does not otherwise adversely affect CorTrust's rights.

Dated:

William J. Fisher
United States Bankruptcy Judge

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DISTRICT OF MINNESOTA**

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UNSWORN CERTIFICATE OF SERVICE

I, David E. Runck, declare under penalty of perjury that on February 9, 2023, I caused the following document:

**Expedited Motion to Authorize CorTrust Bank, N.A. to Change Its Vote On the
Debtors' Plan Under Fed. R. Bankr. P. 3018; and**

Proposed Order

to be served electronically with the Clerk of Court through ECF, and that the above document(s) will be delivered by automatic email notification to all ECF participants participating in this case, and this constitutes service or notice to those participants under Local Rule 9006-1(a).

Dated: February 9, 2023

Signed: /e/ David E. Runck
David E. Runck (#0289954)